

Respondent alleges claimant has not shown by a preponderance of the credible evidence that the injury suffered to his right upper extremity, specifically his right elbow, arose out of and in the course of his employment. Claimant testified to specific activities involving the use of a shovel on a regular basis. Claimant's superintendent, Terry Oneslager, testified that the claimant had advised him that digging with the shovel bothered him and the jabbing with the shovel irritated his elbow.

Recognizing that it is claimant's burden pursuant to K.S.A. 44-501 and K.S.A. 44-508(g) to prove by a preponderance of the evidence the various elements upon which claimant's right depends, the Appeals Board finds claimant has satisfied this burden. As such, the Appeals Board finds the Order of Administrative Law Judge John D. Clark should be, and is hereby, affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated July 6, 1995, shall be and is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Brian D. Pistotnik, Wichita, Kansas  
Kendall R. Cunningham, Wichita, Kansas  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director